

# What does state law empower SWCDs to do? Distinctions between “SHALL” vs “Authorized”

## SHALL

<p>§ <a href="#">10.1-104.1</a>. Department to be lead agency for nonpoint source pollution program.</p>	<p>A. The Department, with the advice of the Board of Conservation and Recreation and the Virginia Soil and Water Conservation Board and in cooperation with other agencies, organizations, and the public as appropriate, shall have the lead responsibility for the Commonwealth's nonpoint source pollution management program. This responsibility includes coordination of the nonpoint source control elements of programs developed pursuant to certain state and federal laws including § 319 of the Clean Water Act and § 6217 of the Coastal Zone Management Act. Further responsibilities include, but are not limited to, the distribution of assigned funds, the identification and establishment of priorities of nonpoint source related water quality problems, and the administration of the Statewide Nonpoint Source Advisory Committee.</p> <p>B. The Department <b>shall be assisted</b> in performing its nonpoint source pollution management responsibilities <b>by Virginia's soil and water conservation districts</b>. Assistance by the soil and water conservation districts in the delivery of local programs and services may include (i) the provision of technical assistance to advance adoption of conservation management services, (ii) delivery of educational initiatives targeted at youth and adult groups to further awareness and understanding of water quality issues and solutions, and (iii) promotion of incentives to encourage voluntary actions by landowners and land managers in order to minimize nonpoint source pollution contributions to state waters.</p> <p>The provisions of this section shall not limit the powers and duties of other state agencies.</p>
<p>§ <a href="#">10.1-546.1</a>. Delivery of Agricultural Best Management Practices Cost-Share Assistance Program.</p>	<p><b>Districts shall locally deliver the Commonwealth's Agricultural Best Management Practices Cost-Share Assistance Program</b>, under the direction of the Department, as a means of promoting voluntary adoption of conservation management practices by farmers and land managers in support of the Department's nonpoint source pollution management program.</p>
<p>§ <a href="#">10.1-559.3</a>. Complaint; investigation; agricultural stewardship plan.</p>	<p>A. After April 1, 1997, upon receiving a complaint, unless the complaint was made anonymously, the Commissioner <b>shall request that the directors of the district in which the land lies determine the validity of the information</b> within twenty-one days. The Commissioner may investigate or ask the directors of the district to investigate an anonymous complaint.</p> <p>B. The district chairman may, on behalf of the district, act upon or reject the Commissioner's request. If the district declines to act, it shall within five days so advise the Commissioner, who shall determine the validity of the complaint.</p> <p>C. If, after investigating a complaint, the Commissioner determines that substantial evidence exists to prove that an agricultural activity is creating or will create pollution, the Commissioner shall notify the owner or operator by registered mail, return receipt requested. If, after investigation, the Commissioner determines that the pollution is a direct result of unusual weather events or other exceptional circumstances which could not have been reasonably anticipated, or determines that the pollution is not a threat to human health, animal health, or aquatic life, water quality or recreational or other beneficial uses, the Commissioner may forego any additional action. Copies of the notice shall be sent to the district in which the agricultural activity is located. The notice shall state that, within sixty days of the receipt of the notice, the owner or operator shall submit to the Commissioner and district an agricultural stewardship plan which includes stewardship measures needed to prevent or cease the pollution. <b>The district shall review the plan</b> and, if the plan includes such measures, the Commissioner shall approve the plan within thirty days after he receives it. Upon approving the owner's or operator's plan, the Commissioner shall inform the owner or operator and the complainant that a plan has been approved. The owner or operator shall begin implementing the approved agricultural stewardship plan within six months of the date on which the owner or operator received the notice that the agricultural activity is creating or will create pollution. (section continues)</p>

## SWCD Plan Approval Mandates....

§ <a href="#">58.1-339.3</a> . Agricultural best management practices tax credit.	<p>A. For all taxable years beginning on and after January 1, 1998, any individual who is engaged in agricultural production for market, or has equines that create needs for agricultural best management practices to reduce nonpoint source pollutants, and has in <b>place a soil conservation plan approved by the local Soil And Water Conservation District (SWCD)</b>, shall be allowed a credit against the tax imposed by § <a href="#">58.1-320</a> of an amount equaling 25% of the first \$70,000 expended for agricultural best management practices by the individual. ...</p> <p>B. Any practice approved by the local Soil and Water Conservation District Board shall be completed within the taxable year in which the credit is claimed. After the practice installation has been completed, the local SWCD Board shall certify the practice as approved and completed, and eligible for credit. The applicant shall forward the certification to the Department of Taxation on forms provided by the Department. The credit shall be allowed only for expenditures made by the taxpayer from funds of his own sources</p> <p>(section continues)</p>
§ <a href="#">58.1-436</a> . Tax credit for purchase of advanced technology pesticide and fertilizer application equipment.	<p>A. Any corporation engaged in agricultural production for market which has in place a nutrient management plan <b>approved by the local Soil and Water Conservation District</b> (section continues)</p>
§ <a href="#">58.1-439.5</a> . Agricultural best management practices tax credit.	<p>A. For all taxable years beginning on and after January 1, 1998, any corporation engaged in agricultural production for market who has in place <b>a soil conservation plan approved by the local Soil and Water Conservation District (SWCD)</b> (section continues)</p>
§ <a href="#">10.1-2100</a> . Cooperative state-local program (pertains to the “Chesapeake Bay Preservation Act”)	<p>Section 9VAC 10-20-120.9.c of the Regulations requires that findings and recommendations of such assessments and any resulting soil and water quality conservation plans will be submitted to the local Soil and Water Conservation District Board, <b>which will be the plan-approving authority</b></p>

### Other binding commitments...

Other binding commitments to carry out a program, project, service include:

- Contracts, commitments entered in to by a SWCD with other agencies and organizations (example: SWCD Dams)
- SWCD performance of tasks established through local ordinance (example: E & S site inspections)
- Others...

## Virginia State Law    Authorizations / Empowerments

§ <a href="#">10.1-532</a> . Employment of officers, agents and employees.	The district directors <b>may</b> employ a secretary-treasurer, whose qualifications shall be approved by the Board, technical experts, and such other officers, agents and employees, permanent and temporary, as they may require, and shall determine their qualifications, duties and compensation
§ <a href="#">10.1-539</a> . Surveys and dissemination of information.	Districts are <b>authorized</b> to (i) conduct surveys, investigations, and research relating to soil erosion and floodwater and sediment damages, and to agricultural and nonagricultural phases of the conservation, development, utilization, and disposal of water, and the preventive and control measures and works of improvement needed; (ii) publish the results of such surveys, investigations, or research; and (iii) disseminate information concerning preventive and control measures and works of improvement. However, in order to avoid duplication of research activities, no district shall initiate any research program except in cooperation with the government of the Commonwealth or the United States.
§ <a href="#">10.1-540</a> . Demonstrational projects.	Districts are <b>authorized</b> to conduct demonstrational projects within the district on lands owned or controlled by the Commonwealth or any of its agencies, with the consent and cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the owner and occupier of such lands or the necessary rights or interests in such lands. The purpose of such projects is to demonstrate by example the means, methods, and measures by which soil and water resources may be conserved, and soil erosion in the form of soil washing may be prevented and controlled, and works of improvement for flood prevention or agricultural and nonagricultural phases of the conservation, development, utilization, and disposal of water may be carried out.
§ <a href="#">10.1-541</a> . Preventive and control measures.	Districts are <b>authorized</b> to carry out preventive and control measures and works of improvement for flood prevention or agricultural and nonagricultural phases of the conservation, development, utilization, and disposal of water within the district including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation and changes in use of land on lands owned or controlled by the Commonwealth or any of its agencies, with the consent and cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the owner and occupier of such lands or the necessary rights or interests in such lands.
§ <a href="#">10.1-542</a> . Financial aid to agencies and occupiers.	Districts are <b>authorized</b> to enter into agreements, within the limits of available appropriations, to give, lend or otherwise furnish financial or other aid to any governmental or other agency, or any occupier of lands within the district, to provide erosion-control and prevention operations and works of improvement for flood prevention or agricultural and nonagricultural phases of the conservation, development, utilization, and disposal of water within the district. Agreements shall be subject to such conditions as the directors may deem necessary to advance the purposes of this chapter
§ <a href="#">10.1-543</a> . Acquisition, improvement and disposition of property.	Districts are <b>authorized</b> to (i) obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, or rights or interests therein; (ii) maintain, administer, and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of this article; and (iii) sell, lease, or otherwise dispose of any of their property or interests therein in furtherance of the provisions of this chapter.
§ <a href="#">10.1-544</a> . Making material and equipment	Districts are <b>authorized</b> to make available, on terms they prescribe, to land occupiers within the district, agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings and other material or equipment that will assist land occupiers to conserve soil

available.	resources, to prevent and control soil erosion and to prevent floods or to carry out the agricultural and nonagricultural phases of the conservation, development, utilization, and disposal of water.
§ <a href="#">10.1-545</a> . Construction, improvement, operation and maintenance of structures.	Districts are <b>authorized</b> to construct, improve, operate and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized in this chapter.
§ <a href="#">10.1-546</a> . Development of programs and plans.	Districts are <b>authorized</b> to develop comprehensive programs and plans for the conservation of soil resources, for the control and prevention of soil erosion, for flood prevention or for agricultural and nonagricultural phases of the conservation, development, utilization, and disposal of water within the district. Such programs and plans shall specify the acts, procedures, performances, and avoidances which are necessary or desirable to effect such programs and plans, including the specification of engineering operations, methods of cultivation, the growing of vegetation, cropping programs, tillage practices, and changes in use of land. After such programs and plans have been approved by the Board, districts are authorized to publish such programs and plans, and information, and bring them to the attention of occupiers of lands within the district.
§ <a href="#">10.1-547</a> . Acquisition and administration of projects; acting as agent for United States, etc.; acceptance of gifts.	Districts shall have the following additional <b>authority</b> : 1. To acquire by purchase, lease, or other similar means, and to administer, any soil conservation, flood prevention, drainage, irrigation, agricultural and nonagricultural water management, erosion control, or erosion prevention project, or combinations thereof, located within its boundaries undertaken by the United States or any of its agencies, or by the Commonwealth or any of its agencies; 2. To manage, as agent of the United States or any of its agencies, or of the Commonwealth or any of its agencies, any soil conservation, flood prevention, drainage, irrigation, agricultural and nonagricultural water management, erosion control or erosion prevention project, or combinations thereof, within its boundaries; 3. To act as agent for the United States or any of its agencies, or for the Commonwealth or any of its agencies, in connection with the acquisition, construction, maintenance, operation, or administration of any soil conservation, flood prevention, drainage, irrigation, agricultural and nonagricultural water management, erosion control, or erosion prevention project, or combinations thereof, within its boundaries; 4. To accept donations, gifts, and contributions in money, services, materials, or otherwise, from the United States or any of its agencies, or from the Commonwealth or any of its agencies or from any other source, and to use or expend such moneys, services, materials, or other contributions in carrying on its operations.
§ <a href="#">10.1-549.1</a> . Virginia Envirothon.	Districts in partnership with other districts, agencies, organizations, and associations are <b>authorized</b> to coordinate and implement the Virginia Envirothon Program, administered by the Virginia Association of Soil and Water Conservation Districts, which enables learning experiences for high school students through competitive events focusing on natural resource conservation.
§ <a href="#">10.1-552</a> . Renting machinery and equipment.	Districts are <b>authorized</b> to rent the machinery and other equipment made available to them by the Department to governing bodies and, individuals, or groups of individuals to be used by them for the purpose of soil and water conservation upon such terms as the district directors deem proper.